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September 7, 1993

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

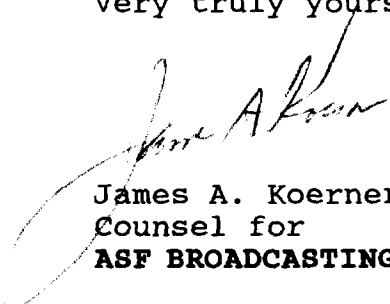
Re: MM Docket No. 93-107

Dear Mr. Caton:

On behalf of ASF Broadcasting Corporation, applicant in the above-referenced proceeding, there are transmitted herewith an original and four (4) copies of its **OPPOSITION TO MOTION TO ENLARGE ISSUES**.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,


James A. Koerner
Counsel for
ASF BROADCASTING CORPORATION

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Enclosures

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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of) MM Docket No. 93-107
)
DAVID A RINGER) File Nos. BPH-911230MA et al.
et al.)
)
For Construction Permit for)
New FM Station on Channel 280A)
at Westerville, Ohio)

TO: Administrative Law Judge
Walter C. Miller

OPPOSITION TO MOTION TO ENLARGE ISSUES

ASF Broadcasting Corporation ("ASF"), by its attorneys, hereby opposes the "Motion to Enlarge" filed in this proceeding by Shellee F. Davis ("Davis"). In response to the Motion, the following is submitted:

Davis has requested an issue to determine whether ASF was financially qualified at the time its application was filed. However, neither its Motion nor the attachments thereto warrant the addition of that or any other issue.

Davis acknowledges that ASF's application budgeted construction and operation expenses, totalling \$90,000, based upon the proposed lease of equipment from Mid-Ohio Communications Inc. Davis also acknowledges that the application provided for availability of funds in the amount of

\$196,000 from Thomas J. Beauvais and \$12,000 from Ardeth S. Frizzell.¹

Davis also acknowledges that the proposal to specify a directional antenna and auxiliary power was made after the filing of the application. Thus, those costs were obviously not included at the time the application was filed. Further, Davis erroneously argues (Motion, p. 2) that Mr. Beauvais has committed only \$100,000 to this venture. However, Attachment 4 to the Motion specifies that Mr. Beauvais would contribute capital stock of \$750.00, additional paid in capital of \$5,250, further additional paid in capital of up to \$30,000, yet, further paid in capital of \$60,000, and a loan in the amount of \$100,000. That totals \$196,000. Ardeth S. Frizzell was to contribute capital stock in the amount of \$250, additional paid in capital of \$1,750, and further additional paid in capital in the amount of \$10,000, for a total of \$12,000. As noted in Ms. Frizzell's Declaration attached hereto, her contribution has now been paid in full.

Davis also acknowledges that a copy of ASF's budget was produced pursuant to the Standard Document Production Order. That budget, attached to Davis' Motion, provides for the lease of the equipment from the former WBBY licensee.

Although Ms. Frizzell did testify that her balance sheet, as of December 31, 1992, was not prepared until early 1993, as

¹The Motion (p.1) erroneously refers to \$12,500 to be received from Ms. Frizzell. Attachment 2 to the Motion clearly specifies \$12,000.

noted in Ms. Frizzell's Declaration, and under any common-sense approach, she knew how much was in her bank accounts as of December of 1991. Further, she knew that she would be receiving termination pay from Mid-Ohio Communications Inc., since WBBY was scheduled to go off the air on December 31, 1991. It is ludicrous for the Commission to insist that an individual sit down and prepare an actual balance sheet for himself or herself simply to demonstrate the availability of \$12,000, when that individual has full knowledge of his or her financial condition. Ms. Frizzell did, on the other hand, have a balance sheet from Thomas J. Beauvais, since she could not be aware of his financial condition without it.

As noted in Ms. Frizzell's Declaration, at the time the application was amended to specify a directional antenna and auxiliary power, even though she was not aware of precise costs, she, as a broadcaster, was aware that such items could be leased or purchased on terms. She also realized that with the availability of over \$200,000 in funds, and projected operating expenses of less than \$90,000, there were more than sufficient funds available. Indeed, even utilizing the figures urged by Davis, which allegedly indicate a shortfall of some \$43,000, the excess of available funds over operating expenses are far more than sufficient to cover a shortfall, even absent the availability of financing alternatives.² Davis also argues that

²Also note, pursuant to the Declaration of Thomas J. Beauvais, that he has agreed that any of the funds which he is to make available, whether before or after grant, may be used for the

the terms of the correspondence relating to the availability of the equipment used by Mid-Ohio may not be sufficient to place a station on the air. This argument is premised upon four words in that correspondence. However, at this time, Davis has advanced no credible documentation that any of the items of equipment will not be available. Indeed, given the fact that Mid-Ohio is no longer the licensee of WBBY, but that the equipment is still in place, it would seem that the only alternative for Mid-Ohio would be to sell the equipment piece by piece on the second hand market. Thus, the "highest and best" use for the equipment is to lease it to the successful applicant in this proceeding. No weight can be given to Davis' speculation.

ASF notes that the issue sought by Davis is limited to ASF's financial qualifications at the time the application was filed, and does not, by its terms, include any subsequent amendment. Nevertheless, and despite the fact that ASF is not required to guess what additional issue or issues may have been desired, it is clearly demonstrated herein that the requested issue, no matter how framed, is unnecessary.

purpose of acquiring the directional antenna and/or auxiliary power facilities.

Accordingly, it is respectfully submitted that the Motion to Enlarge filed by Shellee F. Davis should be denied.³

Respectfully submitted,

ASF BROADCASTING CORPORATION

By 

James A. Koerner
Its Attorney

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& HOCHBERG, P. C.
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SEPTEMBER 7, 1993

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³The Declarations attached hereto are facsimilies; the originals will be filed upon receipt.

DECLARATION

I, Ardeth S. Frizzell, do hereby declare under penalty of perjury as follows:

I am President of ASF Broadcasting Corporation, an applicant for a new FM station at Westerville, Ohio.

At the time I signed and filed the application, in December of 1991, I had in my possession a written budget which included three months of operation, using facilities to be leased from Mid-Ohio Communications, Inc. I also had in my possession a balance sheet of Thomas J. Beauvais, the non-voting stockholder, demonstrating that he had sufficient funds to supply what was needed and which he agreed to provide. I also knew how much I had in my bank accounts, as well as what I was to receive from Station WBBY as termination pay. Thus, I knew that I had, and would be receiving sufficient funds to contributed what was required of me. I have now contributed the total amount required under the Shareholders Agreement.

At some time after the application was filed, it was recommended that ASF specify a directional antenna and auxiliary power. Accordingly, the application was amended to specify these items. Although I did not, at the time of the amendment, know specifically how much these items would cost, I knew that they, as with other equipment, could be leased or purchased on terms. Further, I knew that between Mr. Beauvais and me, over \$200,000 was available, whereas three months of operation, using the leased equipment, would cost less than \$90,000. Accordingly, I believed

then, and believe now, that more than sufficient amounts are available.

Mr. Beauvais has agreed that any funds specified in the Shareholders Agreement could be used, if necessary, to purchase a directional antenna and/or auxiliary power units.

Dated this 7 day of September, 1993:


Ardeth S. Frizzell

DECLARATION

I, Thomas J. Beauvais, do hereby declare under penalty of perjury as follows:

I am the non-voting shareholder of ASF Broadcasting Corporation, applicant for a new FM station at Westerville, Ohio.

I have agreed that any of the funds which I have agreed to make available, whether before or after grant, could be used, if necessary, for the purchase of a directional antenna and/or auxiliary power units for the proposed station.

Dated this 07 day of September, 1993.


Thomas J. Beauvais

Post-It® brand fax transmittal memo 7571 10/1/93 P. 01

To: <i>John H. Hopper</i>	From: <i>Thomas J. Beauvais</i>
Co: <i>RKCCH PC</i>	Co:
Dept:	Phone:
Fax: <i>513-558-5314</i>	Fax: <i>513-558-5314</i>

CERTIFICATE OF SERVICE

I, Bernadette T. Clark, a secretary in the law offices of Baraff, Koerner, Olender & Hochberg, P. C., do hereby certify that copies of the foregoing **OPPOSITION TO MOTION TO ENLARGE ISSUES** were sent this 7th day of September, 1993, via first class mail, postage prepaid to the following:

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Bernadette T. Clark

*Hand Deliver